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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-215807

DATE: November 23, 1984

MATTER OF: Rodenberg's Floor Coatings, Inc.

DIGEST:

1. Fact that bidder did not receive amendment of solicitation in time to acknowledge it timely is irrelevant unless the late receipt of the amendment resulted from a conscious or deliberate attempt by contracting officials to exclude the bidder from competing.
2. Bid modification was untimely where telegram was received after bid opening, notwithstanding contracting agency had received call from telegraph company prior to bid opening advising of modification.
3. Delays of contracting agency in advising of nonresponsiveness of bid and in responding to protest are deficiencies which do not affect the validity of the rejection of the bid.

Rodenberg's Floor Coatings, Inc. (Rodenberg), protests that its telegraphic acknowledgment of amendment 0001 received after bid opening of invitation for bids (IFB) No. N62474-82-B-5422 issued by the Navy Public Works Center (Navy), San Diego, California, should not have been rejected as late.

We deny the protest.

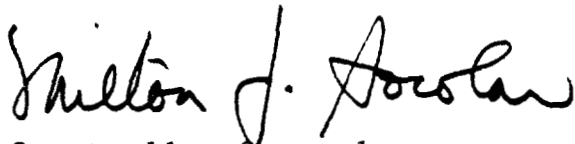
In part, Rodenberg protests on the basis that it did not receive the amendment until the day of bid opening. To the extent that Rodenberg considers this to have been an impropriety, our Bid Protest Procedures provide that a protest based upon an alleged impropriety in an IFB be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1984). In this case, Rodenberg did not protest the late receipt of the amendment until 7 weeks after bid opening. But, even if we accept the protest as timely, the fact that Rodenberg did not receive the amendment in time to acknowledge it timely is irrelevant unless the late receipt of the

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amendment is the result of a conscious or deliberate effort by the contracting officials to exclude Rodenberg from the competition. Western Microfilm Systems/Lithographics, B-196649, Jan. 9, 1980, 80-1 C.P.D. ¶ 27. There is no evidence of that in this case.

Further, Rodenberg protests that the Navy refused to accept timely telephonic notice of its telegraphic acknowledgment from the telegraph company. However, we have held that a bid modification was untimely where a telegram was received after bid opening, notwithstanding the contracting agency had received a telephone call from the telegraph company prior to bid opening advising of the modification. Kings Point Mfg. Co., Inc., B-199992, Apr. 16, 1981, 81-1 C.P.D. ¶ 293; Sturm Craft Company, 57 Comp. Gen. 127 (1977), 77-2 C.P.D. ¶ 444. See also MET Electrical Testing, Inc., 60 Comp. Gen. 321 (1981), 81-1 C.P.D. ¶ 202. Rodenberg's reliance on a clause in Federal Acquisition Regulation (FAR) § 14.303, 48 Fed. Reg. 42,102 42,171 (1983) (to be codified at 48 C.F.R. § 14.303), providing for the acceptance of telephonic notice from the telegraph company, is misplaced. FAR applies to solicitations issued on and after April 1, 1984. The IFB in this case was issued prior to that date. The regulation in effect prior to that date did not provide for acceptance of telephonic notice.

Finally, Rodenberg protests the rejection because the Navy took 2 months to inform it that the bid was nonresponsive and delayed in responding to the protest to our Office. However, these deficiencies do not affect the validity of the rejection of the bid. Cf. The Singer Company, B-211857, B-211857.2, Feb. 13, 1984, 84-1 C.P.D. ¶ 177.

for 
Comptroller General
of the United States